



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 21 2005

REPLY TO THE ATTENTION OF
(AE-17J)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Merit Energy Company
Shell Exploration & Production Company
c/o CSC- Lawyers Incorporating Service Company
601 Abbott Road
East Lansing, Michigan 48823

Re: Notice of Violation/Finding of
Violation
Merit Energy Company / Shell
Exploration & Production Company
Manistee, Michigan

Dear Sir or Madam:

The United States Environmental Protection Agency (U.S. EPA) is issuing the enclosed Notice of Violation (NOV)/Finding of Violation (FOV) to Merit Energy Company/Shell Exploration & Production Company (you) under Section 113(a)(1) and (a)(3) of the Clean Air Act (the Act), 42 U.S.C. § 7413(a)(1) and (a)(3). We find that you have been and/or are violating Part C of the Act, 42 U.S.C. §§ 7470-7492, the Title V permit requirements in Sections 503(c) and 504(a) of the Act, 42 U.S.C. §§ 7661b(c) and 7661c(a), 40 C.F.R. § 52.21, and the Michigan State Implementation Plan at your Manistee, Michigan facility.

Section 113 of the Clean Air Act gives us several enforcement options. These options include issuing an administrative compliance order, issuing an administrative penalty order, and bringing a judicial civil or criminal action. The options we select may depend on, among other things, the length of time you take to achieve and demonstrate continuous compliance with the rules cited in the NOV/FOV.

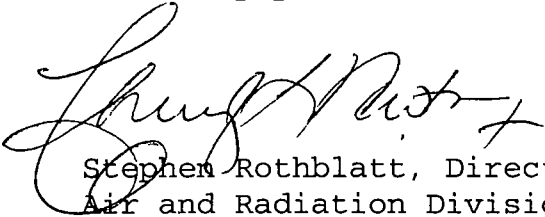
We are offering you an opportunity to confer with us about the violations alleged in the NOV/FOV. The conference will give you an opportunity to present information on the specific findings

of violation, any efforts you have taken to comply, and the steps you will take to prevent future violations.

Please plan to have key technical and management personnel attend the conference to discuss compliance measures and commitments. You may have an attorney represent you at this conference.

The U.S. EPA contact in this matter is Manoj P. Patel. You may call him at (312) 353-3565 to request a conference. You should make the request as soon as possible, but no later than 10 calendar days after you receive this letter. We should hold any conference within 30 calendar days of your receipt of this letter.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Stephen Rothblatt", is written over the typed name and title.

Stephen Rothblatt, Director
Air and Radiation Division

Enclosure

cc: Randall Sanders, Operations Manager-MI
Vicki J. Kniss, Regulatory Affairs -MI
Tom Hess, Michigan DEQ, Lansing, MI
Janis Denman, Michigan DEQ, Cadillac, MI

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:)	
)	
Merit Energy Company)	NOTICE AND FINDING OF
Shell Exploration &)	VIOLATION
Production Company)	
Manistee, Michigan)	EPA-5-05-MI-10
)	
)	
Proceedings Pursuant to)	
Section 113(a)(1) and (a)(3))	
of the Clean Air Act, 42)	
U.S.C. § 7413(a)(1) and (a)(3))	

NOTICE AND FINDING OF VIOLATION

The United States Environmental Protection Agency (U.S.EPA) is issuing this Notice of Violation (NOV)/Finding of Violation (FOV) under Section 113(a)(1) and (a)(3) of the Clean Air Act (the Act), 42 U.S.C. § 7413(a)(1) and (a)(3). U.S.EPA finds that Merit Energy Company (Merit) and Shell Exploration & Production Company (Shell) have been and/or are violating Part C of the Act, 40 U.S.C. §§ 7470-7492, the Title V permit requirements in Sections 503(c) and 504(a) of the Act, 42 U.S.C. §§ 7661b(c) and 7661c(a), and the Michigan State Implementation Plan (SIP) adopted under the Act, at the Manistee facility as follows:

Statutory and Regulatory Background

Prevention of Significant Deterioration Requirements

1. Part C of Title I of the Act, 42 U.S.C. §§ 7470-7492, sets forth requirements for the prevention of significant deterioration (PSD) of air quality in those areas designated as either attainment or unclassifiable for purposes of meeting the National Ambient Air Quality Standards (NAAQS).
2. Sections 110(a) and 161 of the Act, 42 U.S.C. §§ 7410(a) and 7471, require states to adopt a SIP that contains

emission limitations and such other measures as may be necessary to prevent significant deterioration of air quality in areas designated as attainment or unclassifiable.

3. On June 19, 1978, U.S. EPA promulgated PSD regulations pursuant to Part C of the Act. (43 Fed. Reg. 26403). U.S. EPA revised the PSD regulations on several occasions including on August 7, 1980 (45 Fed. Reg. 52676), and December 31, 2002 (67 Fed. Reg. 80186). The PSD regulations are codified at 40 C.F.R. § 52.21 et seq.
4. A state may comply with Sections 110(a) and 161 of the Act by having its own PSD regulations approved as part of its SIP by U.S. EPA, which must be at least as stringent as those set forth at 40 C.F.R. § 51.166.
5. If a state does not have a PSD program that has been approved by U.S. EPA and incorporated into the SIP, the federal PSD regulations set forth at 40 C.F.R. § 52.21 may be incorporated by reference into the SIP. 40 C.F.R. § 52.21(a).
6. On August 7, 1980, U.S.EPA disapproved Michigan's PSD program and incorporated by reference the PSD regulations of 40 C.F.R. § 52.21(b) through (w) into the Michigan SIP at 40 C.F.R. § 52.1180(b) (45 Fed. Reg. 52781, August 7, 1980). On March 10, 2003, U.S.EPA incorporated the revised provisions of 40 C.F.R. § 52.21(a)(2) and (b) through (bb) into the Michigan SIP at 40 C.F.R. § 52.1180(b) (68 Fed. Reg. 11323, March 10, 2003).
7. Section 165 of the Act and 40 C.F.R. § 52.21 prohibit construction of a major stationary source or a major modification without a permit issued under the PSD regulations in any area which has attained the NAAQS.
8. 40 C.F.R. § 52.21(b) (1) (i) defines "Major Stationary Source" as, among other things, any stationary source which emits, or has the potential to emit, 250 tons per year or more of any air pollutant subject to regulation under the Act.
9. 40 C.F.R. § 52.21(b)(2)(i) defines "Major Modification" as any physical change or change in the method of operation of a major stationary source that would result in a

significant net emissions increase of any air pollutant subject to regulation under the Act.

10. 40 C.F.R. § 52.21(b) (3) (i) defines "Net Emissions Increase" as the amount by which the sum of the following exceeds zero: (a) any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; and (b) any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.
11. 40 C.F.R. § 52.21(b) (4) defines "Potential to Emit" (PTE) as the maximum capacity of a stationary source to emit a pollutant under its physical and operational design.
12. 40 C.F.R. § 52.21(b)(23)(i) defines "Significant" as in reference to a net emissions increase or the potential of a source to emit a rate of emissions that would equal or exceed 40 tons per year (tpy) of sulfur dioxide (SO₂).
13. Section 165(a) of the Act, 42 U.S.C. § 7475(a) and 40 C.F.R. § 52.21(a)(2)(iii)(2003) and 40 C.F.R. § 52.21(i) (1995) provide that no stationary source or modification to which the requirements of paragraphs (j) through (r) of this section apply shall begin actual construction without a permit which states that the stationary source or modification would meet those requirements.
14. 40 C.F.R. § 52.21(j) provides that for each pollutant subject to regulation under the Act for which a major modification would result in a significant net emissions increase at the source, the owner or operator of the major modification shall apply Best Available Control Technology (BACT) to each proposed emissions unit at which the increase would occur as the result of physical changes and changes in the methods of operation of the unit.
15. 40 C.F.R. § 52.21(k) through (r) provide that the owner or operator of a major modification shall show that the allowable emissions increase will not contribute to a violation of any NAAQS, and that the increase will not be in excess of any applicable maximum allowable increase over the baseline ambient air concentration.
16. 40 C.F.R. § 52.23 provides, among other things, that

failure to comply with any approved regulatory provision of a SIP, or with any permit limitation or condition contained within an operating permit issued under an EPA-approved program that is incorporated into the SIP, subjects the person or governmental entity so failing to comply, in violation of a requirement of an applicable implementation plan and subject to enforcement action under Section 113 of the Act.

Title V Permit Program

17. Title V of the Act, 42 U.S.C. §§ 7661a-7661f, establishes an operating permit program for certain sources, including "major sources." Pursuant to Section 502(b) of the Act, 42 U.S.C. § 7661a(b), on July 21, 1992, U.S.EPA promulgated regulations establishing the minimum elements of a permit program to be administered by any air pollution control agency. 57 Fed. Reg. 32295. These regulations are codified at 40 C.F.R. Part 70.
18. U.S. EPA granted interim approval of the State of Michigan operating permit program with an effective date of February 10, 1997. See 40 C.F.R. Part 70, Appendix A. U.S.EPA granted final approval effective on November 30, 2001. See 40 C.F.R. Part 70, Appendix A.
19. Section 503(c) of the Act, 42 U.S.C. § 7661b(c), has at all relevant times provided that any person required to have a permit shall submit to the permitting authority a compliance plan and an application for a permit signed by a responsible official who shall certify the accuracy of the information submitted. Section 503(b) of the Act, 42 U.S.C. § 7661b(b), requires a compliance plan to include, among other things; a "schedule of compliance." Section 501(3) of the Act, 42 U.S.C. § 7661(3), defines a "schedule of compliance" as "a schedule of remedial measures, including an enforceable sequence of actions or operations, leading to compliance with an applicable implementation plan, emission standard, emission limitation, or emission prohibition."
20. Section 504(a) of the Act, 42 U.S.C. § 7661c(a), has at all relevant times required that each Title V permit include, among other things, enforceable emission limitations and standards, a schedule of compliance, and such other conditions as are necessary to assure compliance with

applicable requirements of the Act and the requirements of the applicable SIP, including any PSD requirement to comply with an emission rate that meets BACT.

21. Section 70.1(b) of the Title V permit regulations, 40 C.F.R. § 70.1(b), requires all subject sources to have a permit to operate that assures compliance with all applicable requirements. Section 70.2 of the Title V permit regulations, 40 C.F.R. § 70.2, defines "applicable requirement" as " . . . (1) Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under Title I of the Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in part 52 of this chapter; (2) Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under Title I, including parts C or D, of the Act; . . . "

Factual Background

22. Merit owns and operates a sour gas processing plant in Manistee, Michigan (Manistee facility). Prior to December 1, 2003, Shell owned and operated this facility.
23. Manistee County, Michigan is currently classified as attainment or unclassifiable for SO₂. 40 C.F.R. § 81.323.
24. Since at least 1992, the Manistee facility has been a major stationary source as defined at 40 C.F.R. § 52.21(b)(1) because this stationary source emits or has a potential to emit 250 tons per year or more of SO₂.
25. On December 5, 2002, three duly delegated representatives of U.S. EPA conducted an inspection of the Manistee facility to assess compliance with the Act.
26. On June 27, 2003, U.S. EPA issued a Request for Information to the Manistee facility under Section 114 of the Act, 42 U.S.C. § 7414.
27. On August 14 and 27, 2003, Shell responded to USEPA's Request for Information.
28. On October 26, 2004, USEPA issued another Request for Information to Shell under Section 114 of the Clean Air

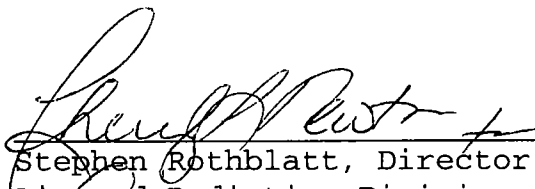
Act, 42 U.S.C. § 7414.

29. On February 24, and March 4, 2005, Merit submitted its responses to USEPA's October 26, 2004 Request for Information.
30. On May 6, 1996, West Shore Processing LLC, and Shell entered into a binding agreement to treat and process West Shore's sour gas at the Manistee facility. The binding agreement requires Shell to restore, at its sole expense, the actual capacity of the plant to treat and process a minimum of thirty-five (35) MMcf/d of the natural gas.
31. Between approximately October 1995 through 2000, Shell upgraded its equipment to restore the capacity of the Manistee facility to treat and produce natural gas and to accommodate the processing of West Shore's sour gas. USEPA refers these physical and operational changes as the *Plant Capacity Project*. The *Plant Capacity Project* increased sour gas processing through the Manistee facility and increased natural gas production and, consequently, increased liquid sulfur recovery and SO₂ emissions. SO₂ emissions increased above the significance threshold in 40 C.F.R. § 52.23(b)(23)(i).
32. All activities in the *Plant Capacity Project* were physical changes and change in the method of operation of a major stationary source that resulted in significant net emissions increase of SO₂ emissions of equal to or greater than 40 tpy. Therefore, the *Plant Capacity Project* constituted a major modification as defined at 40 C.F.R. § 52.21(b)(2). This subjects the *Plant Capacity Project* to Part C of the Act, 40 C.F.R. § 52.21 and the Michigan SIP.
33. Shell did not obtain a PSD permit for the *Plant Capacity Project*.
34. On or about October 8, 1996, Shell submitted an application to the Michigan Department of Environmental Quality (MDEQ) for a Title V permit.
35. On February 22, 2000, MDEQ issued a Title V permit (#199600253) to Shell. On April 2, 2004, MDEQ issued an Administrative Amendment to a Title V permit to Merit.

Violations

36. Shell and Merit violated, and Merit continues to violate Section 165(a)(1) of the Act, 40 C.F.R. §§ 52.21(i)(1995) and 52.21(a)(2)(iii)(2003), and the Michigan SIP, by beginning construction and operation of the *Plant Capacity Project* without first obtaining a PSD permit.
37. Shell and Merit violated, and Merit continues to violate, Section 165(a)(1) of the Act, 40 C.F.R. § 52.21(j)(3), and the Michigan SIP, by failing to install BACT for SO₂ on sulfur recovery plant at the Manistee facility.
38. Shell and Merit violated, and Merit continues to violate, Section 165(a)(1) of the Act, 40 C.F.R. § 52.21(k) through (r), and the Michigan SIP, by failing to conduct a complete source impact analysis for SO₂ prior to the *Plant Capacity Project* at the Manistee facility.
39. The Title V permit application Shell submitted failed to identify all applicable requirements and contain a compliance plan for all applicable requirements for which the facility was not in compliance (including the requirement to meet BACT). The Title V permit issued by MDEQ does not include emission limitations consistent with BACT for the Manistee facility. Shell and Merit have operated and Merit continues to operate the Manistee facility without having a valid operating permit that requires compliance with emission limitations that meet BACT or that contains a compliance plan to meet emission limitations consistent with BACT in violation of Sections 503(c) and 504(a) of the CAA, 42 U.S.C. §§ 7661b(c) and 7661c(a).

9/21/05
Date


Stephen Rothblatt, Director
Air and Radiation Division

CERTIFICATE OF MAILING

I, Shane Rucker, certify that I sent a Notice of Violation,
No. EPA-5-05-MI-10, by Certified Mail, Return Receipt Requested,
to:

Merit Energy Company
Shell Exploration & Production Company
C/o CSC- Lawyers Incorporating Service Company
601 Abbott Road
East Lansing, Michigan 48823

I also certify that I sent copies of the Notice of
Violation by first class mail to:

Janis Denman
Cadillac Air Quality Division District Supervisor
Michigan Department of Environmental Quality
120 West Chapin Street
Cadillac, Michigan 49601-2158

Tom Hess
Compliance and Enforcement Section Supervisor
Michigan Department of Environmental Quality
Air Quality Division
P.O. Box 30260
Lansing, Michigan 48909

Randall Sanders
Operations Manager - Michigan
Merit Energy Company
1510 Thomas Road
Kalkaska, Michigan 49646

Vicki J. Kniss
Regulatory Affairs - Michigan
Merit Energy Company
1510 Thomas Road
Kalkaska, Michigan 49646

On the 26th day of September 2005.

Shane Rucker
Shane Rucker, Secretary
AECAS (MI/WI)

Certified Mail Receipt Number: 7001032000014479536